

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

**IN THE MATTER OF:**

**JAMES L. HEAL,**  
**d/b/a A-1 American and A-1**  
**Imports;**  
**Iowa County, Iowa**

**ADMINISTRATIVE ORDER****No. 2011-WW- 15****No. 2011-SW- 28****TO: A-1 Imports****James L. Heal, owner****P.O Box 137****Memphis MO 53555-0137**

### I. SUMMARY

This Order requires you to:

- Immediately remove all solid waste, including recyclable materials, waste tires, and batteries, from your properties located at 3322 Highway 6 Trail (A-1 American) and 3397 Highway 6 Trail (A-1 Imports), Homestead, Iowa;
- Once the properties have been brought into compliance, you may submit Notices of Intent to obtain a storm water discharge permit for A-1 American and A-1 Imports;
- If storm water discharge permit coverage is obtained, you shall submit adequate Pollution Prevention Plan(s) to Field Office #6, retain a copy of said Plan(s) on site, and comply with said Plan(s) at all times; and
- Pay a penalty of \$10,000, subject to your appeal rights stated in this Order

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Mark Heiderscheit  
IDNR Field Office #6  
1004 West Madison  
Washington, Iowa 52353  
Ph: 515-725-0268

**Relating to appeal rights:**

Jon C. Tack  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8889

**Appeal, if any, addressed to:**

Director, Iowa Dept. of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 (water quality), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and chapter 567--10(455B), Iowa Administrative Code (IAC), which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. James L. Heal operates salvage yards at 3397 Highway 6 Trail, Homestead (A-1 Imports) and 3322 Highway 6 Trail, Homestead (A-1 American – formerly known as A-1 Domestics). These facilities are licensed through the Iowa Department of Transportation (DOT) as authorized auto dealers and A-1 Imports is licensed by the DOT as a vehicle recycler.

2. On October 31, 2003, the Department issued Administrative Order Nos. 2003-WW-35 & 2003-SW-24 to James Heal due to storm water and solid waste violations at the A-1 Imports and A-1 Domestics facilities. The Order was served upon the registered agent for A-1 Imports and A-1 Domestics on May 17, 2004. The Order required James Heal d/b/a A-1 Domestics and A-1 Imports to:

- Within 30 days (June 16, 2004), submit a Notice of Intent to obtain a storm water discharge permit for your properties located at 3322 Highway 6 Trail and 3397 Highway 6 Trail, Homestead, Iowa or submit documents from an Iowa-certified engineer establishing that either or both of the properties are exempt from NPDES requirements due to the lack of storm water discharge from the property;
- Unless an exemption is established, within 60 days (July 15, 2004), submit an adequate Pollution Prevention Plan to Field Office #6, retain a copy of said Plan on site, and comply with said Plan at all times; and
- Pay a penalty of \$1,800 subject to your appeal rights stated in this Order.

James Heal has failed to comply with any provision of Administrative Order Nos. 2003-WW-35 & 2003-SW-24.

3. On February 12, 2005, the Department received a complaint alleging that A-1 Imports was improperly disposing of waste oil and lead acid batteries. The complaint further alleged the improper release of Freon by A-1 Imports.

4. On March 1, 2005 Environmental Specialists Mark Heiderscheit and Isaac Willig

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visited A-1 Imports to investigate the complaint. On that date, Mr. Heiderscheit spoke with James Heal by telephone and an inspection was scheduled for March 4<sup>th</sup>. Later on March 1<sup>st</sup>, a representative of Mr. Heal came to Department Field Office #6 and copied the field office records related to the subject facilities. The representative, Ashley Chance, was informed that Mr. Heal should call to reschedule the inspection.

5. On March 18, 2005, Mr. Heiderscheit consulted the Department's storm water permit records and determined that Mr. Heal had not obtained storm water discharge permit coverage.

6. On March 11, 2005, Mr. Heiderscheit and Environmental Specialist Russ Royce visited A-1 Imports. At that time, violations related to the storage of waste oil and batteries and the handling of discarded appliances were observed. On March 24, 2005 a letter was sent to James Heal, A-1 Imports. The letter outlined the regulations applicable to the violations and contained a list of compliance requirements. A compliance deadline of April 24, 2005 was established by the letter.

7. On January 13, 2006, Environmental Specialists Mark Heiderscheit and Kurt Levetzow inspected the A-1 Imports and A-1 American sites. Violations were observed involving the storage and disposal of batteries, an excess number of waste tires, illegal open dumping of solid waste, and the illegal acceptance of discarded appliances without a permit.

8. On February 7, 2006, Mr. Heiderscheit and Mr. Levetzow inspected the A-1 Imports and A-1 American sites. Violations observed included improper storage of batteries, excess waste tires, and improper storage of waste liquids. A Notice of Violation was issued on February 13, 2006. The Notice informed Mr. Heal of the need to obtain storm water permits, reduce the number of waste tires, remove solid waste, properly store batteries, properly store appliances, properly store waste fluids, maintain receipts, and refuse appliances unless they have been demanufactured by a licensed demanufacturer.

9. As of April 1, 2006, James Heal had not obtained storm water permit coverage for A-1 Imports or A-1 American.

10. On May 18, 2006, the Department issued Administrative Order Nos. 2006-WW-15 & 2006-SW-07. The order included clean-up requirements and assessed a penalty in the amount of \$10,000.

11. On March 2, 2011, the Department inspected the subject properties. The sites were found to be in the same condition of noncompliance as previously noted. At that time, Brian Anderson of AAA Auto Recyclers had taken possession of the property. During the period of March through August of 2011, AAA Auto Recyclers made progress on removing materials from the subject properties and began the process of obtaining a

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storm water permit.

12. On September 12, 2011, the Department was notified that James Heal had retaken possession of the subject properties.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.173 provides that the Environmental Protection Commission (Commission) shall establish rules for the prevention, control, and abatement of water pollution. The Commission has adopted such rules at 567 IAC chapters 38-69.

2. Rules 567 IAC 64.3(4) and 60.2 require that any facility involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards must have a storm water permit. The above facts disclose violations of these provisions.

3. Rule 567 IAC 64.3 requires that a storm water discharge permit holder develop and implement a Pollution Prevention Plan and have that Plan and any maintenance records available on-site for review. The above-stated facts disclose violations of these provisions.

4. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-121.

5. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

6. Iowa Code section 455D.6 provides that the director shall develop a strategy and recommend to the Commission the adoption of rules necessary to implement a strategy for white goods and waste oil by January 1, 1990. Iowa Code section 455D.7 provides that the Commission shall adopt rules necessary to implement Chapter 455D. Chapter 567 IAC 118 has been adopted in fulfillment of this statutory requirement.

7. Pursuant to 567 IAC 118.2(1), no person that is now or plans to be involved in the demanufacturing of appliances is allowed to conduct any demanufacturing activities until an Appliance Demanufacturing Permit (ADP) has been obtained from the Department. The above-stated facts disclose violations of this provision.

8. Pursuant to 567 IAC 118.4(2), no method of handling discarded appliance may be

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used which in any way damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components that may cause a release of refrigerant, PCBs or mercury into the environment. The above-stated facts disclose violations of this provision.

9. Iowa Code section 455D.11B provides that an owner or operator of a waste tire collection or processing site, including an enclosed site, shall obtain a permit from the Department prior to operation of the site. Pursuant to Iowa Code section 455D.11, a "tire collector" means either a person who owns or operates a site used for the storage, collection or deposit of more than five hundred waste tires or an authorized vehicle recycler who is licensed by the state department of transportation pursuant to section 321H.4 and owns or operates a site used for the storage, collection or deposit of more than three thousand five hundred waste tires. These requirements have been incorporated into 567 IAC 117.4. The above-stated facts disclose violations of these provisions.

**V. ORDER**

THEREFORE, you are ordered to:

1. Immediately remove all solid waste, including recyclable materials, waste tires, and batteries, from your properties located at 3322 Highway 6 Trail (A-1 American) and 3397 Highway 6 Trail (A-1 Imports), Homestead, Iowa;
2. Once the properties have been brought into compliance, you may submit Notices of Intent to obtain a storm water discharge permit for A-1 American and A-1 Imports;
3. If storm water discharge permit coverage is obtained, you shall submit adequate Pollution Prevention Plan(s) to Field Office #6, retain a copy of said Plan(s) on site, and comply with said Plan(s) at all times;
4. Pay the previously imposed penalties of \$1,800 and \$10,000 by December 1, 2011; and
5. A penalty of \$10,000 is assessed effective 30 days from your receipt of this Order, and shall be paid to the Department within 60 days of receipt of this Order, unless you appeal this Order as provided in Part VII of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for violations of chapter 455B, Division III, Part 1 (water quality). Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per

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day for violations of Chapter 455B, Division IV, Part 1 (solid waste).

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at Chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit James Heal has achieved an economic benefit from the failure to obtain storm water permit coverage and the failure to properly manage tires. Costs saved include permit fees, preparation costs, and the costs to implement a Pollution Prevention Plan. The minimum fee due for the failure to obtain a permit for 2002-2003 is \$300 for the A-1 Domestic site. Mr. Heal has also avoided labor costs and significant disposal fees by failing to properly demanufacture discarded appliances. Mr. Heal has avoided thousands of dollars in disposal fees for discarded tires. Minimum disposal charges available are approximately \$1.00 per PIE. Mr. Heal has also avoided solid waste disposal costs including landfill fees, hauling costs, and labor costs. Based upon these factors and the multiple days of violation, \$3,000 is assessed for this factor.

b. Gravity of the Violation One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Failure to comply with the requirements for obtaining a storm water permit and developing and implementing the Pollution Prevention Plan undermines the effectiveness of all water quality regulations and endangers the water supply for surrounding rural residents. Without compliance with a Pollution Prevention Plan, there is an increased risk that contamination from appliances and vehicles on the property, including PCB's, mercury, waste oil, transmission fluid, antifreeze, and other chemicals will enter the surface waters of the state through storm water discharges. Improper storage of waste tires provides a home for mosquitoes and other pests and increases the risk of a waste tire fire. Based on the above considerations, \$3,000 is assessed for this factor.

c. Culpability James Heal has been repeatedly informed of the regulations applicable to his facilities. In addition to the duty of all citizens to be aware of environmental regulations, persons in the business of vehicle recycling and metal salvage have an increased obligation to become aware of these requirements. In fact, James Heal has been repeatedly notified of the need to obtain a storm water permit and has failed to comply with the deadlines established by the Department. The refusal to comply after repeated notices and promises of compliance indicates a willful refusal to comply with applicable regulations. James Heal has been issued a prior order and has failed to take any steps to achieve compliance. Based upon these facts and the multiple days of violation, \$4,000 is assessed for this factor.

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**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.191 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC Chapter 7, a written Notice of Appeal may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 455B.307. The Department reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this Order as well as any subsequent violations if the Order is violated.

  
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ROGER L. LANDE, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 17<sup>th</sup> day of

October, 2011

Field Office #6, Jon Tack, V.I.C., I.C.7(a)